IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.15512 of 2004

Between:

1 Sri Shirdi Sai Beverages, Rep. by its Managing Partner, Balineni Ravi,

S/o. Venkata Krishnaiah, H.No. 6-2-19/1/A, Sri Krishna Nagar,

Khanapuram Haveli, Khammam Urban Mandal, Khammam.
2 Gemini Water, Rep. by its Managing Partner, Sanga Venkateswarulu,

S/o. Papaiah, Khammam Urban Mandal, Khammam.
3 Varsha Purified Drinking Water, Rep. by its Managing Partner

P. Krishna Murthy, S/o. Venkateswarulu, H.No. 4-3-73, Zaheerpura,

Khammam Urban Mandal, Khammam.
4 Sujala Aqua Technology, Rep. by its Managing Partner

L. Venkateswarulu, S/o. Peda Vengaiah, H.No. 4-2-151/344/3,

Teachers Colony, Srinivasa Nagar, Khammam.
5 Priya Enterprises, Rep. by its Managing Partner,

Paladugu Venkateswarulu, S/o. Satyam, H.No. 4-2-151/344/3,

Teachers Colony, Srinivasa Nagar, Khammam.

..... PETITIONERS

AND

1 The Government of India, Rep. by its Secretariat,

Ministry of Health and Family Welfare,
Department of Health, New Delhi.

2 The Bureau of Indian Standards, Branch Office,

Nampalli Station Road, Hyderabad.
3 The District Collector, Khammam District, Khammam.
4 The Gazetted Food Inspector, Khammam District, Khammam.
5 The Superintendent of Police, Khammam District, Khammam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ, order or direction, more particularly, one in the nature of Writ of Mandamus declaring the impugned Notification dated 29-09-2000 issued by the first respondent in GSR No.759(E) and 760 (E) and in GSR No. 202(E) dated 21-03-2001 as illegal, arbitrary, capricious and without jurisdiction and violative of Articles 14,16 and 21 of the Constitution of India and consequently quash the said impugned notifications issued by the respondents.

Counsel for the Petitioner: M/s CHINNA BABA, SRIKALA K.

Counsel for the Respondent Nos.1 and 2: Mr. A. RAJASEKHAR REDDY SC for Central Government

Counsel for Respondent Nos.3 to 5: GP FOR FORESTS M&H & AH and FISHERIES

The Court made the following:

ORDER:

In this writ petition, Sri Shirdi Sai Beverages and other partnership firms involved in the business of marketing and manufacturing of mineral water and packaged drinking water, are the petitioners, seeking declaration that the action of the respondents herein in insisting upon them for production of Bureau of Indian Standards (BIS) Certificate and interfering with the manufacturing process and business activities of the petitioners as illegal and arbitrary.

This Court while admitting the writ petition passed interim orders in WPMP

No.20153 of 2004 directing the respondents not to interfere with the manufacturing process of mineral water and packaged drinking water and business activities of the petitioners by insisting BIS Certificate. The fourth respondent herein filed WVMP No.3121 of 2004 along with counter affidavit opposing the writ petition. When these matters are called, learned Counsel for the petitioners and learned Additional Standing Counsel for respondents brought to my notice that all the questions raised herein were considered by a Division Bench in the judgment in W.P. No.5086 of 2001 and batch dated 30.9.2004 and the contentions of the petitioners were negatived. Insofar as the applicability of the Prevention of Food Adulteration Act, 1954 (the Act, for brevity) to water is concerned, the Division Bench having regard to the Prevention of Food Adulteration Rules, 1955 and other the relevant provisions, laid down as under:

It is thus clear that water, which is excluded from the definition of 'food' in Section 2(v) of the PFA Act, is ordinary water, which is clearly distinguishable from all kinds of 'mineral water' or 'natural water' and 'packaged drinking water' which may derive from any source of potable water subjected to treatments etc. Therefore, the notification issued by the Central Government dated 29-03-2001 declaring 'packaged drinking water' as 'food' for the purposes of provisions of the PFA Act, in no manner amounts to amending the provisions of the PFA Act as contended by the learned counsel for the petitioners. The article of 'packaged drinking water' is added as an additional item as 'food' for the purposes of the PFA Act in view of its nature and substance etc. The 'packaged drinking water' as defined hereinabove is comprehensive in its term, which takes into account the water that, is being manufactured and processed by the petitioners' companies. The impugned amendments, in our considered opinion, cannot be characterised as arbitrary, capricious, unreasonable and unjust as complained by the petitioners.

The Division Bench also came to conclusion that the previous consultation with Bureau of Indian Standards is not required when the standard for articles is prescribed by BIS. The relevant observations made therein are as follows:

That a reading of Section 2(a) together with 2(g) of the BIS Act makes it abundantly clear that the requirement of use of standard mark for article and process is not confined to articles or process manufactured or produced by the scheduled industry alone. The requirement of previous consultation with the Bureau by the Central Government as is required under Section 14 of the Act is only with reference to the article or process of the scheduled industry and not with regard to other articles.

Therefore following the Division Bench judgment as referred to herein above, the writ petition is dismissed.

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V.V.S. RAO, J

November 02, 2004.

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To

1. The Secretary, Ministry of Health and Family Welfare

Department, (Health), Government of India, New Delhi.
2. The Director, Bureau of Indian Standards,

Nampally, Sation Road, Hyderabad.
3. The District Collector, Khammam District, Khammam.

4. The Gazetted Food Inspector, Khammam District, Khammam.

5. The Superintendent of Police, Khammam District, Khammam.

6. Two CCs to the Government Pleader for Medical, Health

and Family Welfare, High Court Buildings, Hyderabad (O.U.T).

7. Two C.D. Copies.